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27 GUARANTEED RATE AFFINITY, LLC
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20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 GUARANTEED RATE AFFINITY, LLC,
23 Plaintiff,
24 v.
25 JONATHAN ENGLER,
26 Defendant.

Case No. 3:22-CV-00336-MMD-CLB

**STIPULATED CONFIDENTIALITY
AGREEMENT, ESI PROTOCOL AND
FRE 502(D) AND (E) CLAWBACK
AGREEMENT/ORDER**

1 Plaintiff Guaranteed Rate Affinity, LLC and Defendant Jonathan Engler (collectively the
 2 "Parties") hereby stipulate that in order to protect the confidentiality of information produced in
 3 connection with this case, the Parties agree as follows:

4 1. Any party or nonparty may designate as "CONFIDENTIAL" or "HIGHLY
 5 CONFIDENTIAL – ATTORNEY'S EYES ONLY" (by stamping the relevant page or labeling the item
 6 or as otherwise set forth herein) any item, piece of information, document, or response to discovery,
 7 which that party considers in good faith to contain information involving personal or confidential
 8 information of third parties or non-parties, trade secrets, or sensitive or confidential medical, business,
 9 or financial information ("Confidential Information"). "HIGHLY CONFIDENTIAL – ATTORNEY'S
 10 EYES ONLY" information shall be limited to sensitive, highly confidential, nonpublic information,
 11 consisting either of trade secrets or other highly confidential business, customer, financial, marketing
 12 or strategic information, the disclosure of which may cause competitive or business injury to the
 13 designating party. Where a document or response consists of more than one page, the first page and
 14 each page on which Confidential Information appears shall be so designated.

15 2. A party or nonparty may designate documents, items, or information disclosed during
 16 a deposition "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" by
 17 so indicating on the record at the deposition and requesting the preparation of a separate transcript of
 18 such material. Additionally, a Party may designate in writing, within 14 days after receipt of the
 19 deposition transcript for which the designation is proposed, that specific pages of the transcript be
 20 treated as Confidential Information. Any other party may object to such proposal, in writing or on the
 21 record. Upon such objection, the Parties shall follow the procedures described in Paragraph 9 below.
 22 After any designation made according to the procedure set forth in this paragraph, the designated
 23 documents or information shall be treated according to the designation until the matter is resolved
 24 according to the procedures described in Paragraph 9 below, and counsel for all Parties shall be
 25 responsible for making all previously unmarked copies of the designated material in their possession
 26 or control with the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES
 27 ONLY" designation upon notice from the designating party.

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1 3. All Confidential Information produced or exchanged in the course of this case (other
 2 than information that is publicly available) shall be used solely for the purpose of this case, including
 3 appeal.

4 4. Except with the prior written consent of the producing party or nonparty, or upon prior
 5 order of this Court obtained upon notice to the producing party, Confidential Information marked
 6 "CONFIDENTIAL" shall not be disclosed to any person other than:

7 (a) the Parties and counsel for the respective Parties to this litigation, including in-
 8 house counsel and co-counsel retained for this litigation;

9 (b) employees of such counsel;

10 (c) any officer or employee of a party, to the extent deemed necessary by counsel
 11 for the prosecution or defense of this litigation;

12 (d) consultants or expert witnesses retained for the prosecution or defense of this
 13 litigation, provided that each such person shall execute a copy of the written assurance annexed to this
 14 Stipulated Protective Order as Exhibit A (which shall be retained by counsel to the party so disclosing
 15 the Confidential Information and made available for inspection by opposing counsel during the
 16 pendency or after the termination of the action only upon good cause shown and upon order of the
 17 Court) before being shown or given any Confidential Information;

18 (e) any authors or recipients of the Confidential Information;

19 (f) the Court, Court personnel, and court reporters;

20 (g) litigation-support services, including independent document copiers, graphic
 21 artists, and jury or trial consultants;

22 (h) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign
 23 the Exhibit A written assurance before being shown a confidential document. Confidential Information
 24 may be disclosed to a witness who will not sign the written assurance only in a deposition at which
 25 the party who designated the Confidential Information is represented or has been given notice that
 26 Confidential Information shall be designated "CONFIDENTIAL" pursuant to Paragraph 2 above.

27 Witnesses shown Confidential Information shall not be allowed to retain copies; and

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(i) any other person agreed upon by the Parties in writing, which shall not require further order of the Court.

5. Except with the prior written consent of the producing party or nonparty, or upon prior order of this Court obtained upon notice to the producing party, Confidential Information marked "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY" shall not be disclosed to any person other than:

(a) counsel for the respective Parties to this litigation, including in-house counsel and co-counsel retained for this litigation;

(b) employees of such counsel;

(c) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the written assurance annexed to this Stipulated Protective Order as Exhibit A (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information;

(d) the Court, Court personnel, and court reporters;

(e) litigation-support services, including independent document copiers, graphic artists, and jury or trial consultants; and

(f) any other person agreed upon by the Parties in writing, which shall not require further order of the Court.

6. Any persons receiving Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein.

7. No party shall file or submit for filing as part of the court record any document under seal except as provided by LR IA 10-5. A party who intends to file any paper, pleading, or exhibit containing, discussing, describing, or constituting Confidential Information designated by the other party or a nonparty must notify the designating party of that intention. The designating party must then inform the filing party whether the documents should be filed under seal or not. If so, as provided by

1 LR IA 10-5, the filing party must file a motion to seal. The designating party may also be asked to
 2 show cause why the documents should remain sealed.

3 8. A Party may designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 4 ATTORNEY’S EYES ONLY” documents or discovery materials produced by a nonparty by providing
 5 written notice to all Parties of the relevant document numbers or other identification within 30 days
 6 after receiving such documents or discovery materials. Any party may voluntarily disclose to others
 7 without restriction any information designated by that party as confidential.

8 9. If a party contends that any material is not entitled to “CONFIDENTIAL” or “HIGHLY
 9 CONFIDENTIAL – ATTORNEY’S EYES ONLY” treatment, such party may at any time give written
 10 notice of each designation it is challenging and describing the basis for each challenge to the party
 11 who designated the material. The Parties shall attempt to resolve each challenge in good faith and must
 12 begin the process by conferring telephonically or in-person within 14 days of the date of service of
 13 notice. In conferring, the Parties shall discuss the party’s basis for challenging the confidentiality
 14 designation, and the other party’s response to the same. If the Parties cannot resolve a challenge
 15 without court intervention, the party who designated the material shall have 21 days from the meet
 16 and confer to apply to the Court for an order designating the material as confidential. The party seeking
 17 the “CONFIDENTIAL” treatment has the burden of establishing that the document is entitled to
 18 protection.

19 10. Notwithstanding any challenge to the designation of material as Confidential
 20 Information, all documents or items shall be treated as “CONFIDENTIAL” or “HIGHLY
 21 CONFIDENTIAL – ATTORNEY’S EYES ONLY” and shall be subject to the provisions hereof unless
 22 and until one of the following occurs:

23 (a) the party that claims that the material is Confidential Information withdraws
 24 such designation in writing; or

25 (b) the party that claims that the material is Confidential Information fails to apply
 26 to the Court for an order designating the material “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
 27 – ATTORNEY’S EYES ONLY” within the time period specified above after the meet and confer
 28 process; or

(c) the Court rules the material is not "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY."

11. Any person in possession of another party's Highly Confidential Information shall maintain a written information-security program that includes reasonable administrative, technical, and physical safeguards designed to protect the security and confidentiality of such Highly Confidential Information, protect against any reasonably anticipated threats or hazards to the security of such Highly Confidential Information, and protect against unauthorized access to or use of such Highly Confidential Information. To the extent a person or party does not have an information-security program they may comply with this provision by having the Highly Confidential Information managed by or stored with counsel of record, eDiscovery vendors, or claims administrators that maintain such an information-security program.

If any party discovers a breach of security, including any actual or suspected unauthorized access, relating to another party's Highly Confidential or Confidential Information, the receiving party shall: (1) promptly provide written notice to designating party of such breach; (2) investigate and take reasonable efforts to remediate the effects of the breach, and provide designating party with assurances reasonably satisfactory to designating party that such breach shall not recur; and (3) provide sufficient information about the breach that the designating party can reasonably ascertain the size and scope of the breach. If required by any judicial or governmental request, requirement, or order to disclose such information, the receiving party shall take all reasonable steps to give the designating party sufficient prior notice in order to contest such request, requirement or order through legal means. The receiving party agrees to cooperate with the designating party or law enforcement in investigating any such security incident. In any event, the receiving party shall promptly take all necessary and appropriate corrective action to terminate the unauthorized access.

12. All provisions of this Order restricting the communication or use of Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information, shall either (a) return such documents or items no later than 30 days after conclusion of this action to counsel for the party who provided such information, or (b) destroy such documents within the time

1 period upon consent of the party who provided the information and certify in writing. Notwithstanding
2 the requirements in this paragraph, counsel of record for the Parties may maintain a copy of all court
3 filings, discovery, and correspondence.

4 13. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the use of
5 documents at trial.

6 14. Nothing herein shall be deemed to waive any applicable privilege or work-product
7 protection, or to affect the ability of a Party to seek relief for an inadvertent disclosure of material
8 protected by privilege or work-product protection. The inadvertent disclosure or production of any
9 document this action shall not result in the waiver of any privilege, evidentiary protection, or other
10 protection associated with such document as to the receiving party or any third parties, and shall not
11 result in any waiver, including subject-matter waiver, of any kind.

12 15. This protective order will remain in full force and effect at all times during which any
13 party to this protective order or any person having executed the attached Exhibit A retains possession,
14 custody, or control any confidential material.

15 Dated: November 9, 2022.

16 Respectfully submitted,

17 */s/ Steven A. Caloiaro*
18 STEVEN A. CALOIARO, ESQ.
BROOKS T. WESTERGARD, ESQ.
DICKINSON WRIGHT PLLC
19
20 Attorneys for Defendant
JONATHAN ENGLER

Respectfully submitted,

21 */s/ Karyn M. Taylor*
22 KARYN M. TAYLOR, ESQ.
LUKE W. MOLLECK, ESQ.
JAMES M. WITZ, ESQ.
THOMAS W. CARROLL, ESQ.
LITTLER MENDELSON, P.C.

23 The Court's jurisdiction over this protective order will cease upon conclusion of the case.

24 **IT IS SO ORDERED.**

25
26 **DATED:** November 14, 2022.


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UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

EXHIBIT A

1 EXHIBIT A

2 WRITTEN ASSURANCE

3 _____ [Name] declares that:

4 I reside at _____ in the city of _____,
5 county _____, state of _____.

6 I am currently employed by _____ located at
7 _____.

8 _____ and my current job title is _____.

9 I have read and believe I understand the terms of the Protective Order dated
10 _____, 2022 filed in Case No. 3:22-CV-00336-MMD-CLB, pending in the United States
11 District Court for the District of Nevada. I agree to comply with and be bound by the provisions of
12 the Protective Order. I understand that any violation of the Protective Order may subject me to
13 sanctions by the Court. I shall not divulge any documents electronically stored information or copies
14 of documents or electronically stored information designated “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEY’S EYES ONLY” obtained pursuant to such Protective Order, or the
16 content of such documents or electronically stored information, to any person other than those
17 specifically authorized by the Protective Order. I shall not copy or use such documents or
18 electronically stored information except for the purposes of this action and pursuant to the terms of
19 the Protective Order.

20 As soon as practicable, but no later than 30 days after final termination of this action, I shall
21 return to the attorney from whom I have received them any documents or electronically stored
22 information in my possession designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
23 ATTORNEY’S EYES ONLY” and all copies, excerpts, summaries, notes, digests, abstracts, and
24 indices relating to such documents or electronically stored information.

25 I submit myself to the jurisdiction of the United States District Court for the District of Nevada
26 for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

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1 I declare under penalty of perjury that the foregoing is true and correct.
2
3 Dated: _____
4
5 _____
6 (Signed)
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8 _____
9 (Print Name)
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